IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

A.S.No. 292 of 2002(E)

O.S.NO.172 OF 1995 OF THE COURT OF THE ADDITIONAL SUB JUDGE, NORTH PARAVUR.

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APPELLANTS: (DEFENDANTS 15 & 16):-

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1. THANKACHAN, SON OF PAPPACHAN,
   VARAKKULAM, CHENGAL DESOM, VADAKKUMBHAGOM VILLAGE,
   ALUVA TALUK.

2. MINI THANKACHAN, WIFE OF THANKACHAN, DO. DO.

   BY ADV. SRI.T.K.VENUGOPALAN
   SRI.SHIBU JOSEPH

RESPONDENTS: (PLAINTIFFS & DEFENDANTS 1 TO 14):-

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1. PAUL, SON OF VARKEY, KOTTACKA @ KUDIYIRIPPU,
   MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

2. VARKEY, SON OF POULO, ARACKAL,
   MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

3. AUGUSTHY, SON OF AUGUSTHY,
   PADINJAREKKARA, THURAVOOR VILLAGE, ALUVA TALUK.

4. THOMAS, SON OF OUSEPH, CHOWWARAN,
   MATTOOR KARA,MATTOOR VILLAGE, ALUVA TALUK.

5. AUGUSTHY, SON OF POULO, PALELY,
   RESIDING AT YORDHANAPURAM, MATTOOR VILLAGE, ALUVA TALUK.

*** 6. CHAKKU, SON OF MATHU, KOTTTACKKA @
   KUDIYIRIPPY, MATTOOR VILLAGE, ALUVA TALUK. **(DIED)**

7. PAPPACHAN, SON OF DEVASSY,
   KOTTAKKA @ KUDIYIRIPPU, MATTOOR VILLAGE, ALUVA TALUK.

8. SAMSON, SON OF CHACKU, MULAVARICKA,
   THEVARAMADOM KARA, MATTOOR VILLAGE, ALUVA TALUK.

9. ANTONY, SON OF POULO, MULAVARICKKA,
   MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

10. POULOKUTTY, SON OF POULO, PUTHUSSERY, DO. DO.

11. FRANCIS, SON OF KUNJU VARIED,
KOTTACKA, MATTOOR VILLAGE, ALUVA TALUK.

* 12. DEVASSY @ PAPPU, SON OF POULO, PALATTY,
VALADAN BHAGOM, MATTOOR VILLAGE, ALUVA TALUK **(DIED).**

$ 13. MARY, WIFE OF LATE KOCHU POULO, DO. DO. (REMOVED)

$ 14. JOY, SON OF LATE KOCHY POULO, DO. DO. (REMOVED)

$ ** 15. CHAKKU, SON OF POULO, DO. DO. **(DIED)** (REMOVED)

$ 16. THOMAS, SON OF POULO,
PALATTY, MAROTTICHODU BHAGOM,
MATTOOR VILLAGE, ALUVA TALUK. (REMOVED)

$ 17. ELSY, WIFE OF LATE OUSEPH,
PALATTY, VALADAN BHAGOM,
MATTOOR VILLAGE, ALUVA TALUK. (REMOVED)

$ 18. ELIAKUTTY, DAUGHTER OF POULO, PALATTY, DO. DO. (REMOVED)

$ 19. MARY, DAUGHTER OF POULO, AND WIFE
OF MAROTTIKUDY PAPPU, NADUVATTOM KARA,
MANJAPRA VILLAGE, ALUVA TALUK. (REMOVED)

$ 20. ALPHONSA, DAUGHTER OF POULO,
PALATTY AND WIFE OF PUTHUSSERY POULOSE, KANJOOR DESOM,
VADAKUMBHAGOM VILLAGE, ALUVA TALUK. (REMOVED)

$ # * 21. ROSY, WIFE OF LATE DEVASSY, PALATTY,
VALADAN BHAGOM, MATTOOR KARA,
MATTOOR VILLAGE, ALUVA TALUK. (REMOVED)

$ # 22. VALSA, DAUGHTER OF DEVASSY, DO. DO. **(DIED)** (REMOVED)

$ # * 23. PAULSON, SON OF DEVASSY, DO. DO. (REMOVED)

$ # * 24. DEVASSYKUTTY, SON OF DEVASSY, DO. DO. (REMOVED)

$ # * 25. ANSON, SON OF DEVASSY, DO. DO. (REMOVED)

** <u>ADDITIONAL RESPONDENTS 26 & 27 IMPLEADED:</u>

$ ADDL.26. MARY, WIFE OF CHACKU, PALATTY, PIRAROOR P.O. (REMOVED)

$ ADDL.27. RIJO, SON OF CHACKU, PALATTY, PIRAROOR P.O. (REMOVED)

*** ADDITIONAL RESPONDENTS 28 TO 34 IMPLEADED:

ADDL.28. ROSY, WIFE OF CHAKKU KOTTACKA @ KUDIYIRIPPU,
MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

ADDL.29. MATHACHAN, SON OF CHAKKU KOTTACKA @ KUDIYIRIPPU,
MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

ADDL.30. JOSE, SON OF CHAKKU KOTTACKA @ KUDIYIRIPPU,
MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

ADDL.31. SHEELA, DAUGHTER OF CHAKKU KOTTACKA @ KUDIYIRIPPU,
MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

ADDL.32. ANTU, SON OF CHAKKU KOTTACKA @ KUDIYIRIPPU,
MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

ADDL.33. JOHNSON, SON OF CHAKKU KOTTACKA @ KUDIYIRIPPU,
MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

ADDL.34. SHEEBA, DAUGHTER OF CHAKKU KOTTACKA @ KUDIYIRIPPU,
MATTOOR KARA, MATTOOR VILLAGE, ALUVA TALUK.

* (IT IS RECORDED THAT RESPONDENT NO.12 DIED DURING THE PENDENCY OF THE SUIT ITSELF AND RESPONDENTS 21, 23, 24 AND 25 WERE RECORDED AS THE LEGAL REPRESENTATIVES OF DECEASED RESPONDENT NO.12 IN THE SUIT ITSELF (VIDE ORDER ON C.M.P. NO.6868 OF 2002 DATED 19.03.2007).

(IT IS RECORDED THAT RESPONDENT NO.22 DIED AND HER LEGAL REPRESENTATIVES ARE RESPONDENTS 21, 23, 24 & 25 AS PER ORDER ON C.M.P.NO.6868 OF 2002 DATED 19.03.2007)

** (ADDITIONAL RESPONDENTS 26 AND 27 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 15TH RESPONDENT AS PER ORDER ON C.M.P.NO.26 OF 2003 DATED 19.03.2007)

*** (ADDITIONAL RESPONDENTS 28 TO 34 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED 6TH RESPONDENT AS PER ORDER ON I.A.NO.953 OF 2007 DATED 19.3.2007).

$ (RESPONDENTS 13 TO 27 ARE REMOVED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANTS AS PER ORDER ON I.A.NO.955 OF 2007 DATED 19.03.2007).

R1 TO R11 BY ADV. SRI.M.A.ABDUL HAKHIM
R13, 14, 16, 17, 21, 23, 24 & 25 BY ADV.SRI.M.C.SEN (SR.)
SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN.

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 19/03/2007, ALONG WITH A.S.NO.392 OF 2002-A, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

A.S.Nos.292 of 2002-E & 392 of 2002-A

Dated, this the 19th day of March, 2007

JUDGMENT

Plaintiffs 1 to 11 filed a suit for specific performance alleging that defendants 1, 4 to 6 and the predecessor in interest of defendants 2 and 3 had entered into an agreement for sale in their favour in respect of the suit property, but subsequently they sold the property to defendants 7 to 9. So, they sought specific performance of the contract for sale. Though the defendants contested the suit, it was partly allowed. The parties to the agreements, Exhibits A1 to A3, or their legal heirs except minors, namely Jobin and Bibin, were directed to execute sale deed in favour of the plaintiffs with regard to their share in the plaint schedule property on deposit of the balance sale consideration. Challenging the decree and judgment passed in the case, defendants 15 and 16 filed A.S.No.292 of 2002 and defendants 2 to 6 and 10 to 14 filed A.S.No.392 of 2002.

2. When these appeals came up for hearing, the appellants in A.S.No.292 of 2002, respondents 1 to 5, 7 to 11 and legal representatives of 6th respondent in that appeal

submitted that they have settled the matter out of Court. It is agreed that the decree passed in the suit can be set aside. It is also agreed that the two sale deeds, bearing No.1098 of 1995 and 1099 of 1995 of S.R.O. Sreemoolanagaram and the two release deeds, bearing Nos.2029 of 1995 and 2029 of 1995 of S.R.O. Sreemoolanagaram, are valid and binding on respondents 1 to 5, 7 to 11 and additional respondents 28 to 34. The appellants filed an application supported by an affidavit of the 1st appellant along with the compromise. I have allowed that application and recorded the compromise. So, the appeals are only to be disposed of in terms of compromise.

In the result, both the appeals are allowed. The decree and judgment passed by the Court below in O.S.No.172 of 1995 are hereby set aside. The suit is disposed of in terms of compromise. The terms of compromise will form part of the judgment. The parties are directed to suffer their costs. C.M.P.No.3042 of 2002 in A.S.No.292 of 2002 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-